

APPEAL NO. 030614  
FILED APRIL 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 2003. The hearing officer determined that respondent (claimant) sustained a compensable occupational disease injury to her upper extremities, with a date of injury of \_\_\_\_\_; and that appellant (carrier) waived the right to contest the compensability of the claimed injury. Carrier appealed both determinations and claimant responded that the hearing officer did not err in making the complained-of determinations.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable occupational disease injury to her upper extremities. There was evidence that claimant's hands began to bother her while she was working doing repetitive activities in October 2001. Claimant was eventually diagnosed with bilateral carpal tunnel syndrome (CTS) and claimant's doctor related it to her work. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends that the hearing officer erred in determining that it waived the right to contest the compensability of the claimed injury. Claimant apparently filed a claim regarding a right shoulder injury in 2001. Carrier accepted that injury and began paying benefits. Claimant said she was out of work for the shoulder injury for about six weeks in 2001, and that she returned to work in October. She said her hands then began bothering her at that time. Carrier apparently filed a Payment of Compensation or Notice of Refused/Dispute Claim (TWCC-21); the TWCC-21 in the record is not file marked. In box 43 of that TWCC-21, carrier said, "Carrier hereby denies any and [sic] liability for treatment and disability to [CTS] as not part of the original compensable injury, therefore no injury within course and scope of employment." It appears that after carrier denied that the bilateral CTS injury was related to the shoulder injury, claimant then filed a separate claim (second claim) for the bilateral CTS injury. In an Employee's Notice of Injury of Occupational Disease and Claim for Compensation (TWCC-41) dated \_\_\_\_\_, the claimant and employer were named and claimant said the date of injury was "\_\_\_\_\_"; that the part of the body affected was the "right shoulder"; that the nature of the injury was "[CTS] both hands"; and that the worksite location was a certain named area of employer's premises. Apparently the reference to the right shoulder in the TWCC-41 for the second claim was an error. The questions on the TWCC-41 regarding how the injury occurred and when claimant knew the occupational disease was related to her employment were both left blank. This TWCC-41 is date

stamped received by a Texas Workers' Compensation Commission (Commission) field office on October 1, 2002.

A TWCC-21 filed on November 26, 2002, states that carrier denies the claim regarding the bilateral CTS because claimant did not sustain an injury in the course and scope of employment; that she was not working when the "alleged incident occurred"; and that she did not timely report the injury. Carrier also stated that the right shoulder injury was a continuation of the (first date of injury), incident and that "medical and disability will be paid" on that prior claim. That TWCC-21 states that carrier first received written notice of the second claim on October 25, 2002.

Carrier asserts that the TWCC-41 filed by claimant for the second claim does not fairly inform carrier that the injury is work related. However, the TWCC-41 states that it is a notice of occupational disease, names the employer's premises as the "worksite location" of the occupational disease, states the claimant's name and occupation at the time of the injury, the name of the employer and the alleged date of injury. We conclude that the hearing officer could find from the evidence that the TWCC-41 fairly informed carrier that the claimed injury was work related.

Carrier asserts that it did not waive the right to contest compensability because it had already initiated benefits to claimant and no additional benefits were owed. However, carrier had not complied with Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) in that it had not either disputed or taken some action on the second claim within the seven-day period. Carrier paid benefits on the first claim, but was required to comply with Downs regarding this claim.

Carrier contends that it had already denied compensability of the bilateral CTS claim. It is true that carrier denied liability of the CTS claim on the sole ground that it was not related to the shoulder injury. However, when claimant filed a separate claim for the CTS, carrier did not deny liability of the CTS. The sole ground it had stated before for denying liability no longer applied since the CTS claim was now separate from the claim for the shoulder injury. Claimant was not on notice whether carrier was now denying the separately-filed CTS claim on any ground.

Carrier cites Texas Workers' Compensation Commission Appeal Nos. 011090 and 011091, decided July 2, 2001, in support of its contention that it need not have filed another TWCC-21 or taken any other action. In that case, the carrier received written notice of an injury on July 25, 2000, when the employer submitted an Employer's First Report of Injury or Illness (TWCC-1), alleging an injury date of (second date of alleged injury), and involving "multiple upper extremities/ hands/ wrists/arms." The carrier disputed by filing a TWCC-21. The claims involving the left and right upper extremities were then divided into two separate claims. The claimant filed a TWCC-41 for the "left hand and wrist," and alleged an injury date of (first date of alleged injury). The carrier filed no additional dispute in response to this notice of injury. The appeals panel determined that carrier disputed the original claimed injury, which included the left wrist

injury, and need not have disputed again after the injuries were divided into two separate claims. The appeals panel said:

[I]t is apparent that the TWCC-21 filed by the carrier was intended to serve as a contest of the compensability of the claimed bilateral upper extremity injuries, which includes a contest of compensability of the left upper extremity injury. To require the carrier to dispute an injury, which it has previously disputed, simply because the initial claim has been divided into two claims and the claimant alleges a different date of injury for one of the claimed injuries, would represent an elevation of form over substance. Texas Workers' Compensation Commission Appeal No. 981432, decided August 12, 1998.

The case before us is distinguishable because, as of the filing of the new, separate claim for the bilateral CTS injury, carrier had not denied liability for this claim on any still-applicable ground. The sole ground stated in the prior TWCC-21, that the bilateral CTS was not related to the shoulder injury, no longer applied once a separate claim had been filed. There is no elevation of form over substance in this case to require carrier to comply with Downs.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is:

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
THE STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge